IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3969 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JETHALAL G RAVAL

Versus

STATE OF GUJARAT

Appearance:

M/S NJ MEHTA ASSO. for the Petitioner.

Mr. Ketan N Parikh, ASSTT. GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/07/2001

ORAL JUDGEMENT

The petitioner was appointed as a primary teacher on 16th June, 1957. He was given selection grade of Rs.400-600 with effect from 1.1.1973. He has putin 30 years of service as a primary teacher. During his service career, he received various awards. The

petitioner was appointed as Officer on Special Duty in Miday meal scheme of the State Government and on deputation and for that purpose, he would get Rs.400/more as special pay in addition to pay upto 31st July, 1985. By a memo dated 10th December, 1984 of the Under Secretary, Education Department, the petitioner was also provided a vehicle for the smooth working of the special assignment. He performed duties and responsibilities of special duty till 31st July, 1985 and he regularly received an amount of Rs.400/- per month as special pay in addition to his salary. It is also stated that the respondent authorities decided not to give the aforesaid pay scale of class I officer to the petitioner and decided to give him only Rs.400/- per month. The petitioner retired from service with effect from 31st July, 1985. He also performed special duties from 11.11.84 to 31st July, 1985. The petitioner recei@ved a memo dated 17th June, 1987 from the Under Secretary, Education Department whereby the earlier memo dated 10.12.84 was modified and it has been substituted by the words " ...and the appointment is given upto 31st July, 1985 with 20% special pay" in place of the words "...and the appointment is given upto 31st July, 1985 with special pay of Rs.400/-" with retrospective effect from the date of retirement. By a memorandum dated 17th June, 1987 difference was directed not to be recovered from the petitioner. The plea of the petitioner is that the authorities have wrongly substituted 20% special place in place of special pay of Rs.400/- as he had also given instance of one P.C.Parekh who was the Chairman of Gujarat Secondary Edication Board, Gandhinagar with effect from 1.8.77 and Parekh was given the pay scale of Rs.1600-2000 with a special pay of Rs.300/- per month and in that respect, the resolution dated 3rd December, 1977 was also filed at annexure "C" to the petition. The petitioner has challenged the order dated 17.6.87 at Annexure "B" whereby the earlier memo has been amended and special pay has been reduced to 20% of basic pay in place of Rs.400/- with retrospective effect from the date of retirement.

2. The contention of the learned counsel for the petitioner is that the petitioner is entitled for the pensionary benefits calculated at the basic pay rate as per Rule 9(41-A) of Bombay Civil Service Rules, 1959 which prescribes pensionary pay and it is mentioned that pensionable pay means the average pay earned by a Government servant during his last three years of service. For the purpose of this definition, "pay" means and includes special pay as defined in Rule 9(41)(a) and (b) if it is permanently attached to the post in which

duty is performed and (e) special pay as defined in Rule 49(c). Special pay has been defined under Rule 9(49) wherein special pay means an addition of nature of pay to the emoluments of a post or of a Government servant granted in consideration of (a) the specially arduous nature of the duties; or (b) a specific addition to the work or responsibility or (c) deleted.

On the basis of Rule cited by the learned counsel for the petitioner, it is contended by him that special pay whichever has been granted to the petitioner will be deemed a special pay for calculating pensionary benefits. It is also contended by the learned counsel for the petitioner that while reducing the special pay of Rs.400/- to 20% of the basic pay, the petitioner has not been given any opprotunity of hearing which is also in violation of natural justice.

3. On the contrary, the learned Assistant Government Pleader pointed out from the Government resolution issued by the Finance Department dated 5th August, 1981 wherein the deputation pay has been prescribed at a uniform rate of 20% of the pay subject to the maximum of Rs.300/- per month provided the pay + deputation allowance shall at no time exceeding Rs.3000/- per month. On the basis of this resolution dated 5th August, 1981, the learned Assistant Government Pleader pointed out that the special pay for deputation has been fixed at uniform rate of 20% of the pay subject to the maximum of Rs.300/- per month. Even if any surplus amount is paid to any Government servant and more than 20% of pay towards special pay has been paid, that surplus amount will not be recovered as per the provisions of para-2 of the Resolution dated 5.8.81. Uniformity has been adopted in prescribing the special pay for special assignment or duty on deputation. By the resolution dated 5th August, 1981 the amount has been fixed, whether the duty is of less responsibility or more assignment and the uniform rate has been fixed by this resolution. The petitioner cannot claim much more special pay than as defined under this resolution and it is not necessary that the petitioner should be given an opportunity of hearing for fixing the amount of special pay for the purpose of pensionary benefits. The authorities have committed no mistake in substituting the amount of 20% of pay in place of Rs.400/- towards special pay and that has been done as per the resolution dated 5th August, 1981.

4. I have carefully considered the contentions of the learned counsel for the parties. It appears that the petitioner was appointed on deputation

basis and that was an additional work. For specific assignment, the petitioner was given the special pay of Rs.400/- though according to this resolution dated 5th August, 1981, the special pay ought to have been calculated at the uniform rate of 20% of pay subject to maximum of Rs.300/- per month, but in case some more amount has been fixed or given to any person towards special pay, that excess amount would no be recoverable from the person concerned. So far as the question of giving an opportunity of hearing prior to making provisions and reducing the special pay from Rs.400/- to 20% of the pay is concerned, the department is not required to give any opportunity in this respect inasmuch as special pay ought to have been given at the rate of 20% of the pay or maximum amount of Rs.300/- per month and even if some more amount has been given to the petitioner, that more amount is not recoverable under this resolution dated 5th August, 1981. The respondent authorities have calculated the pensionary benefits in respect of special pay as per the resolution dated 5th August, 1981. As such, I do not find any infirmity or illegality in the impugned order passed by the respondent authorities. As a result, this petition deserves to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. However, the respondent authorities are directed not to recover the amount which is more than 20% of pay which has already been paid to the petitioner either from his pension or any other pensionary benefits.

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